

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0634-LII-E TCEQ ID: RN104805023 CASE NO.: 35748
RESPONDENT NAME: JOE F. SLATER

Page 1 of 2

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input checked="" type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 120 Heritage Place, Glen Rose, Somerville County

TYPE OF OPERATION: Landscape irrigation

SMALL BUSINESS: ☐ Yes ☒ No

OTHER SIGNIFICANT MATTERS: A complaint was received February 19, 2008. The complaint alleged that the Respondent began installing an irrigation system but did not complete the job and that the system was of poor quality. There is no record of additional pending enforcement actions regarding this Respondent.

INTERESTED PARTIES: The complainant has not expressed a desire to protest this action or speak at Agenda. No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on January 12, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Stephanie Frazee, Litigation Division, MC 175, (512) 239-3693
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Ms. Suzanne Walrath, Air Enforcement Section, MC 149, (512) 239-2134

TCEQ Regional Contact: Mr. Sid Slocum, Dallas/Fort Worth Regional Office, R-4, (817) 588-5901

Respondent: Mr. Joe F. Slater, P. O. Box 2412, Granbury, TX 76048

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: February 19, 2008</p> <p>Date of Investigation Relating to this Case: February 20, 2008</p> <p>Date of NOE Relating to this Case: April 10, 2008</p> <p>Background Facts: The EDPRP was filed on September 23, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on September 25, 2008, as evidenced by the signature on the card. The Respondent has failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: The Respondent has not obtained an irrigator license.</p> <p>LII:</p> <p>Failed to possess a valid irrigator license issued by the TCEQ prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system [30 TEX. ADMIN. CODE §§ 30.5(a) and 344.4(a)TEX. WATER CODE §37.003, and TEX. OCC. CODE §1903.251(a)(1)].</p>	<p>Total Assessed: \$1,336</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$1,336</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this proposed Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none">1. Immediately cease selling, designing, consulting, installing, maintaining, altering, repairing, or servicing landscape irrigation systems until properly licensed.2. Within fifteen days, submit written certification to demonstrate compliance with the above Ordering Provision.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision March 8, 2008

DATES	Assigned	14-Apr-2008	Screening	16-Apr-2008	EPA Due	
	PCW	17-Sep-2008				

RESPONDENT/FACILITY INFORMATION			
Respondent	Joe F. Slater		
Reg. Ent. Ref. No.	RN104805023		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	35748	No. of Violations	1
Docket No.	2008-0634-LII-E	Order Type	1660
Media Program(s)	Irrigators	Enf. Coordinator	Suzanne Walrath
Multi-Media		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **Subtotals 2, 3, & 7**

Notes

Culpability **Subtotal 4**

Notes

Good Faith Effort to Comply **Subtotal 5**

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

Total EB Amounts **Subtotal 6**
Approx. Cost of Compliance ***Capped at the Total EB \$ Amount**

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL **Adjustment**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

Screening Date 16-Apr-2008

Docket No. 2008-0634-LII-E

PCW

Respondent Joe F. Slater

Policy Revision 2 (September 2002)

Case ID No. 35748

PCW Revision March 8, 2008

Reg. Ent. Reference No. RN104805023

Media [Statute] Irrigators

Enf. Coordinator Suzanne Walrath

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No enhancement due to no previous compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 16-Apr-2008		Docket No. 2008-0634-LII-E		PCW
Respondent Joe F. Slater		<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 35748		<i>PCW Revision March 8, 2008</i>		
Reg. Ent. Reference No. RN104805023				
Media [Statute] Irrigators				
Enf. Coordinator Suzanne Walrath				
Violation Number		<div style="border: 1px solid black; padding: 2px; text-align: center;">1</div>		
Rule Cite(s)		<div style="border: 1px solid black; padding: 5px;">30 Tex. Admin. Code §§ 344.4(a) and 30.5(a), Tex. Water Code § 37.003 and Tex. Occupations Code § 1903.251(a)(1)</div>		
Violation Description		<div style="border: 1px solid black; padding: 5px;">Failed to possess a valid irrigator license issued by the TCEQ prior to selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system. Specifically, the Respondent contracted, accepted monies for, and performed irrigation system installation services at 120 Heritage Place in Glen Rose, Somerville County, Texas without possessing a valid, effective landscape irrigator license issued by the Commission, as documented during a record review conducted on February 20, 2008 .</div>		
Base Penalty				<div style="border: 1px solid black; padding: 2px; text-align: center;">\$2,500</div>
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>
	Potential	<div style="border: 1px solid black; padding: 2px; text-align: center;">x</div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>
				Percent <div style="border: 1px solid black; padding: 2px; text-align: center;">25%</div>
>> Programmatic Matrix				
Falsification				
Major				
Moderate				
Minor				
				Percent <div style="border: 1px solid black; padding: 2px; text-align: center;">0%</div>
Matrix Notes	Installing irrigation systems without a license could expose human health to pollutants which would exceed protective levels.			
Adjustment				<div style="border: 1px solid black; padding: 2px; text-align: center;">\$1,875</div>
				<div style="border: 1px solid black; padding: 2px; text-align: center;">\$625</div>
Violation Events				
Number of Violation Events		<div style="border: 1px solid black; padding: 2px; text-align: center;">1</div>	Number of violation days	
		<div style="border: 1px solid black; padding: 2px; text-align: center;">56</div>		
<i>mark only one with an x</i>	daily	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	Violation Base Penalty <div style="border: 1px solid black; padding: 2px; text-align: center;">\$625</div>	
	monthly	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>		
	quarterly	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>		
	semiannual	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>		
	annual	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>		
	single event	<div style="border: 1px solid black; padding: 2px; text-align: center;">x</div>		
One single event is recommended.				
Economic Benefit (EB) for this violation			Statutory Limit Test	
Estimated EB Amount		<div style="border: 1px solid black; padding: 2px; text-align: center;">\$761</div>	Violation Final Penalty Total <div style="border: 1px solid black; padding: 2px; text-align: center;">\$1,336</div>	
This violation Final Assessed Penalty (adjusted for limits)				<div style="border: 1px solid black; padding: 2px; text-align: center;">\$1,336</div>

Economic Benefit Worksheet

Respondent Joe F. Slater
Case ID No. 35748
Reg. Ent. Reference No. RN104805023
Media Irrigators
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$711	17-Oct-2007	16-Apr-2008	1.4	\$50	\$711	\$761
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

One-time avoided cost to obtain a valid irrigator license (licensing and course costs combined), calculated from the approximate date the irrigation system was installed through case screening date.

Approx. Cost of Compliance \$711

TOTAL \$761

Compliance History

Customer/Respondent/Owner-Operator:	CN602954000	SLATER, JOE F	Classification:	Rating:
Regulated Entity:	RN104805023	SLATER, JOE F	Classification:	Site Rating:
ID Number(s):				
Location:	4304 PEAK ROAD, GRANBURY, HOOD COUNTY, TEXAS 76048			
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	April 15, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 14, 2003 to April 14, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Libby Hogue	Phone:	512-239-1165	

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | No |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- | | |
|------------------------|---|
| A. | Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government. |
| | N/A |
| B. | Any criminal convictions of the state of Texas and the federal government. |
| | N/A |
| C. | Chronic excessive emissions events. |
| | N/A |
| D. | The approval dates of investigations. (CCEDS Inv. Track. No.) |
| | N/A |
| E. | Written notices of violations (NOV). (CCEDS Inv. Track. No.) |
| | |
| F. | Environmental audits. |
| | N/A |
| G. | Type of environmental management systems (EMSs). |
| | N/A |
| H. | Voluntary on-site compliance assessment dates. |
| | N/A |
| I. | Participation in a voluntary pollution reduction program. |
| | N/A |
| J. | Early compliance. |
| | N/A |
| Sites Outside of Texas | |
| | N/A |

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING JOE F. SLATER,
RN104805023**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2008-0634-LII-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 37, TEX. OCC. CODE ch. 1903, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Joe F. Slater ("Mr. Slater").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Mr. Slater owns and operates a landscape irrigation business out of 4304 Peak Road, Granbury, Hood County, Texas (the "Business").
2. Mr. Slater sells, designs, consults, installs, maintains, alters, repairs, and/or services landscape irrigation systems. Therefore, Mr. Slater is subject to TCEQ jurisdiction pursuant to TEX. OCC. CODE ch. 1903 and TEX. WATER CODE ch. 37.
3. During an investigation conducted on February 20, 2008, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Mr. Slater failed to possess a valid irrigator license issued by the TCEQ prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system. Specifically, Mr. Slater contracted, accepted monies for, and performed irrigation system installation services at 120 Heritage Place in Glen Rose, Somerville County, without possessing a valid, effective landscape irrigator license issued by the Commission.
4. Mr. Slater received notice of the violation on or about April 15, 2008.

5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Joe F. Slater" (the "EDPRP") in the TCEQ Chief Clerk's office on September 23, 2008.
6. By letter dated September 23, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Slater with notice of the EDPRP. According to the return receipt "green card," Mr. Slater received notice of the EDPRP on September 25, 2008, as evidenced by the signature on the card.
7. More than twenty days have elapsed since Mr. Slater received notice of the EDPRP, provided by the Executive Director. Mr. Slater failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Slater is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 37, TEX. OCC. CODE ch. 1903, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Slater failed to possess a valid irrigator license issued by the TCEQ prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system in violation of 30 TEX. ADMIN. CODE §§ 30.5(a) and 344.4(a), TEX. WATER CODE § 37.003, and TEX. OCC. CODE § 1903.251(a)(1).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served Mr. Slater with proper notice of the EDPRP as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7, Mr. Slater has failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Slater and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Slater for violations of the Texas Water Code and the

Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

6. An administrative penalty in the amount of one thousand three hundred thirty six dollars (\$1,336.00) is justified by the facts recited in this Order and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Slater is assessed an administrative penalty in the amount of one thousand three hundred thirty six dollars (\$1,336.00) for violations of TEX. WATER CODE ch. 37, TEX. OCC. CODE ch. 1903, and rules of the TCEQ. The payment of this administrative penalty and Mr. Slater's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within thirty days after the effective date of this Order and shall be sent with the notation "Re: Joe F. Slater; Docket No. 2008-0634-LII-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Mr. Slater shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Mr. Slater shall cease selling, designing, consulting, installing, maintaining, altering, repairing, or servicing landscape irrigation systems until properly licensed, in accordance with the requirements of 30 TEX. ADMIN. CODE ch. 344.

- b. Within fifteen days after the effective date of this Order, Mr. Slater shall submit written certification as described below and include detailed supporting documentation to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Andrew Gardner, Manager
Regulatory Compliance Section
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Slater. Mr. Slater is ordered to give notice of this Order to personnel who maintain day-to-day control over the Business operations referenced in this Order.
5. If Mr. Slater fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Slater's failure to comply is not a violation of this Order. Mr. Slater shall have the burden of establishing to the Executive Director's satisfaction that such an

event has occurred. Mr. Slater shall notify the Executive Director within seven days after Mr. Slater becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Slater shall be made in writing to the Executive Director. Extensions are not effective until Mr. Slater receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Slater if the Executive Director determines that Mr. Slater has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF STEPHANIE J. FRAZEE

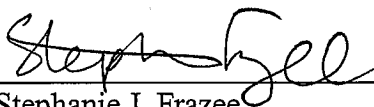
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Stephanie J. Frazee. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Joe F. Slater" (the "EDPRP") with the Office of the Chief Clerk on September 23, 2008.

I sent the EDPRP to Mr. Slater at his last known address on September 23, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Mr. Slater received notice of the EDPRP on September 25, 2008, as evidenced by the signature on the card.

More than twenty days have elapsed since Mr. Slater received notice of the EDPRP. Mr. Slater failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference."



Stephanie J. Frazee
Attorney
Texas Commission on Environmental Quality

Affidavit of Stephanie J. Frazee
Page 2

Before me, the undersigned authority, on this day personally appeared Stephanie J. Frazee, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 14th day of November, A.D., 2008.

Notary Stamp

Rochelle D. Collins
Notary Signature

